

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ALBERT GARZA,

Petitioner,

v.

L.J. ODDO,

Respondent.

No. 3:15-CV-02482

(Judge Brann)

(Magistrate Judge Carlson)

**ORDER**

**APRIL 16, 2019**

Albert Garza, a federal inmate, filed this 28 U.S.C. § 2241 petition in which he asserted that the United States Parole Commission improperly denied him parole.<sup>1</sup> District Judge Richard P. Conaboy denied the petition after concluding that certain claims violated the abuse of the writ doctrine and others failed on the merits.<sup>2</sup> Garza thereafter filed the pending motion to alter or amend the judgment.<sup>3</sup>

In January 2019, Magistrate Judge Martin C. Carlson issued a Report and Recommendation, recommending that this Court largely deny the motion on the grounds that Garza failed to present any legitimate reason to revisit the earlier decision, and one claim was not presented in Garza's § 2241 petition.<sup>4</sup> Magistrate Judge Carlson recommended, however, that this Court vacate the portion of Judge Conaboy's order

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<sup>1</sup> Doc. 1.

<sup>2</sup> Docs. 23, 24.

<sup>3</sup> Doc. 25.

<sup>4</sup> Doc. 30.

denying a certificate of appealability, as none is needed for § 2241 petitions filed by federal inmates.<sup>5</sup> Garza filed timely objections to the Report and Recommendation.<sup>6</sup>

“If a party objects timely to a magistrate judge’s report and recommendation, the district court must ‘make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’”<sup>7</sup>

District courts may accept, reject, or modify—in whole or in part—the magistrate judge’s findings or recommendations.<sup>8</sup> After conducting de novo review of the Report and Recommendation, the Court finds no error in the recommendation. Consequently,

**IT IS HEREBY ORDERED** that:

1. Magistrate Judge Martin C. Carlson’s Report and Recommendation (Doc. 30) is **ADOPTED in its entirety**; and
2. Garza’s motion to alter or amend the judgement (Doc. 25) is **GRANTED in part**, to the extent that the denial of a certificate of appealability is vacated. The motion is **DENIED** in all other respects.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

United States District Judge

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<sup>5</sup> *Id.* at 6.

<sup>6</sup> Doc. 32.

<sup>7</sup> *Equal Emp’t Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) (quoting 28 U.S.C. § 636(b)(1)).

<sup>8</sup> 28 U.S.C. § 636(b)(1); Local Rule 72.31.